

Schiller

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

EDWARD BRACEY,

Petitioner,

v.

JEFFREY BEARD, et al.,

Respondents,

CIVIL ACTION (HABEAS CORPUS)

No. 02-CV-3685

Hon. Berle R. Schiller

This is a capital case

**MOTION FOR OPPORTUNITY TO REPLY TO THE
COMMONWEALTH'S ANSWER
TO PETITIONER'S MOTION FOR DISCOVERY**

Petitioner, Edward Bracey, through undersigned counsel, respectfully requests an opportunity to reply to the Commonwealth's *Response to Petitioner's Motion for Discovery*.¹ Specifically, Petitioner seeks thirty (30) days in which to reply to the Commonwealth's *Response*.

1. Petitioner is a death-sentenced prisoner. On October 11, 2002, Petitioner filed a *Motion for Discovery*, seeking, *inter alia*, discovery of materials relevant to Petitioner's claim that the prosecutor in his case, Judith Rubino, intentionally exercised her peremptory strikes in a racially discriminatory manner. The basis for this claim was presented in full to the state courts and is now before this Court as Claim III of the *Petition for Writ of Habeas Corpus*.

¹ Petitioner's *Motion for Discovery* was initially filed on October 11, 2002. In response to this Court's request, that Motion was resubmitted along with the *Petition for Writ of Habeas Corpus* on November 22, 2002.

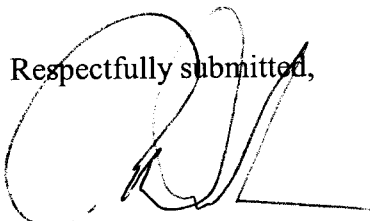
2. On October 28, 2002, the Commonwealth filed a Response to *Petitioner's Motion for Discovery*, averring that a) the requested discovery was improper prior to the filing of a habeas petition; b) the claim with respect to which this discovery is sought is not properly before this court; and c) Petitioner's state court litigation is not yet complete because Petitioner filed a PCRA petition on August 16, 2002, seeking relief under Atkins v. Virginia, 122 S. Ct. 2242 (2002). The Commonwealth has thus questioned whether Petitioner is properly in federal court at all.

3. All three of the Commonwealth's objections lacked merit. However, subsequent to the Commonwealth's response, Petitioner completed and filed his *Petition for Writ of Habeas Corpus* and a supplement thereto, which rendered moot the Commonwealth's first objection. The other two objections remain ripe and require briefing.

4. Petitioner respectfully requests permission to respond to the Commonwealth's arguments, and asks this Court for thirty (30) days to do so. He seeks thirty (30) days rather than fourteen (14) because undersigned counsel is preparing for an evidentiary hearing commencing on December 9, 2002 in Commonwealth v. Wilson, Nos. 3267, 3270 & 3271, July Term, 1988 (Phila. C.P.) on discriminatory jury selection practices by another Philadelphia prosecutor, Jack McMahon, and an oral argument on December 16, 2002 in Commonwealth v. Miller, Nos. 2775, 2775-A, 2787 & 2787-A C.D. 1992 (Dauphin C.P.) on his post-conviction petition to vacate his death sentence on grounds of mental retardation.

WHEREFORE, Petitioner respectfully requests that this Court grant him an opportunity to respond to the Commonwealth's arguments, and allow him 30 days in which to prepare and file such Brief.

Respectfully submitted,



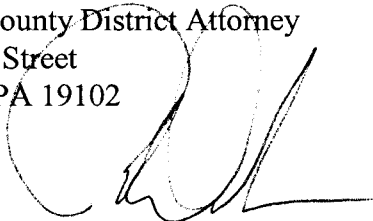
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Philadelphia, PA 19106
(215) 928-0520

Dated: November 27, 2002

CERTIFICATE OF SERVICE

I, Robert Brett Dunham, hereby certify that on this date, I caused the foregoing *Motion for Opportunity to Reply to the Commonwealth's Answer to Petitioner's Motion for Discovery* to be served on the following person by first class mail:

Thomas Dolgenos, Esq.
Office of the Philadelphia County District Attorney
1421 Arch Street
Philadelphia, PA 19102



Robert Brett Dunham, Esq.

Dated: November 27, 2002

FILED
NOV 27 2002
MUNICIPAL COURT
PHILADELPHIA